UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/697,448	10/26/2000	David Bruce Kumhyr	AUS9-2000-0499-US1	3531

7590 07/05/2005	**EXAMINER**
Kelly K Kordzik	VO, TED T
100 Congress Avenue	

ART UNIT	PAPER NUMBER
2192	

Suite 800
Austin, TX 78701

DATE MAILED: 07/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *31 March 2005*.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-53* is/are pending in the application.

   4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-43,51-53* is/are rejected.

7)☒ Claim(s) *44-50* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

   a)☐ All   b)☐ Some * c)☐ None of:

   1.☐ Certified copies of the priority documents have been received.

   2.☐ Certified copies of the priority documents have been received in Application No. _____.

   3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
   application from the International Bureau (PCT Rule 17.2(a)).

   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
   Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____.
5)☐ Notice of Informal Patent Application (PTO-152)
6)☐ Other: _____.

DETAILED ACTION

1.   This action is in response to the amendment filed on 03/31/2005 responsive to Office Action

dated on 01/04/2005.

Claims 51-53 are added.

Claims 1-21, 51 and Claim 22-42 and 52 are now rejected under 35 U.S.C 101 because the

claimed invention is directed to non-statutory subject matter.   Accordingly, this action is non-final.

Claims 1-53 remain pending in the application.

Response to Arguments

2.   Applicants' arguments in the Remarks section have been fully considered.

Applicants have argued the prior, Bogda does not teach, <u>detect</u> resource exception errors (emphasis

added), by pointing out and arguing (Remarks: page 13) that Bodga page 5 describes how to

accommodate pre-existing through and catch statements that are parts pf pre-existing code being

scanned. Applicants argue no teaching to claimed limitation of Claim 1.   Applicants also argue

(Remarks: page 14) that Bodga page 14 describes a technique for eliminating synchronization and has

nothing to do with detecting resource exception errors.

Examiner response, in this action, because it requires all the claims must meet the statutory of 35 U.S.C

101. The 1-21, 51 and Claim 22-42 and 52 has been identified in this action as failing to meet the

requirement under 35 U.S.C 101. The rejections of such Claims are required. Accordingly. The new

ground of rejections presents in this Office Action.   Examiner would respectfully request an amendment

to make the Claims under the statute of 35 U.S.C 101.

All Applicants arguments has been fully consider but not persuasive. For example, within the

identification of Claim 1 and 22 under 35 U.S.C 101, the detections as claimed can be performed by

closely examining on the papers, where the papers present with the elements in the Claims.

Moreover, the breadth of the claims is broad, the claimed limitation merely recites broad languages such as scanning a code...; identifying a first method invocation...; opening said source file.... etc that could be interpretable. The 35 USC 101 addressed, is an example.

All Applicants' arguments in this action, particularly, the arguments are mentioned above, are moot because the Office Action is non-final, and the new ground of rejection presents in this Office action.

Claim Rejections - 35 USC § 101

3.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4.   The claims 1-21, 51 and Claim 22-42 and 52 are rejected under 35 U.S.C 101 because the claimed invention is directed to non-statutory subject matter.

As per claims 1-21, 51: Claims 1-21, and 51 are claiming a method. As led in Claim 1, the claim recites

A method for detecting resource exception errors comprising the steps of:

> *scanning a code for a first method invocation used to open a first resource file;*

> *identifying said first method invocation; and*

> *opening said first resource file using said first method invocation to detect resource exception errors.*

This method is identified as not a tangible method. The method of this claim could by performed by closely examining a list of method invocations presented in a paper, where each method invocation is identifying to a resource file also presented on a paper. The steps of claim such as scanning, identifying, opening, recite broadly that could be performed without using computer facilities since the hardware/computer elements are absent in the claim. A person could detect a resource exception error in a resource file with the papers and his own closely look in such manner of the Claim.

Thus, this claim is a mere abstract idea since it fails to recite elements of hardware. Accordingly, this claim fail to meet the statutory claim required under 35 U.S.C 101.

Claims 2-21 and 51 fail to remedy the deficiencies of independent claim 1.

Therefore, Claims 1-21 and 51 without tangibly hardware embodied are rejected under 35 U.S.C 101 as being a mere abstract idea.

As per claims 22-42, 52: Claims 22-42, and 52 are claiming a computer program product. As led in Claim 22, the claim recites

> *A computer program product in a computer readable medium* (a mere program code store in *computer readable medium*) *for detecting resource exception errors* (intended for detecting resource exception errors only: fails to be performed by a computer), *comprising:*
>
> *programming* (a mere computer software code) *operable for scanning a code for a first method invocation used to open a first resource tile* (software code intended for scanning a code only)*;*
>
> *programming* (a mere computer software code) *operable for identifying said first method invocation* (software code intended for identifying only)*; and*
>
> *programming* (a mere computer software code) *operable for opening said first resource file using*

said first method invocation to detect resource exception errors (software code intended for opening a file only).

This product is identified as not a tangible product. It stores instructions therein only. The Claims of software product that fail to include limitations showing being performed by a computer will be claiming program per se. All the claimed limitations shown above are a mere list of functional descriptive materials, but not embedded and executed by a computer. Such claiming will not produce a result a required by 35 U.S.C 101. Thus this claim is a mere program with a list of instructions. Accordingly, this claim fail to meet the statutory claim required under 35 U.S.C 101.

Claims 23-42 and 52 fail to remedy the deficiencies of independent claim 22

Therefore, Claims 22-42 and 52 without tangibly hardware embodied are rejected under 35 U.S.C 101 as being a program per se.

Claim Rejections - 35 USC § 102

5.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for

the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6.   Claims 1, 22, 43, 51-53 are rejected under 35 U.S.C. 102(b) as being anticipated by Bogda et al.,

"Removing Unnecessary Synchronization in Java", Technical Report TRCS99-10, University of California,

Dept. of Computer Science, April 1999.

Given the broadest reasonable interpretation of followed claim(s) in light of the specification: .

As per claim 1:

Bogda discloses a method that includes detecting resource exception errors (See page 5,

paragraph: "Some Java constructs...a.array=x": term referring "class Exception"). It covers the

limitations:

A method for detecting resource exception errors comprising the steps of:

scanning a code for a first method invocation used to open a first resource file (See page 14,

paragraph, "Some authors...multi-threaded": referring the compiler that scans a program to find threads:

"After scanning an entire program");

identifying said first method invocation (See page 5, paragraph: "Because of dynamic...*methods-*

invoked(m), and further see whole section 4.1, "Detecting s-escaping objects" started in page 5); *and*

opening said first resource file (For example, 'escapes' or 'Exception.escapes') *using said first method*

invocation to detect resource exception errors (See page 5, paragraph: "Some Java

constructs...a.array=x": term referring "class Exception").

As per Claims 22 and 43:

Claims 22 and 43 recite a computer program product and a data processing system, respectively, which have claimed functionality corresponding to the limitation recited in Claim 1. Claims 22 and 43 are rejected in the same rationale set forth in Claim 1 above.

As per Claim 51:

Bogda remains disclosing the step of Claim 51 because the claimed language "resource file is an associative of keys and values", because this claimed element does not functionally participated in the step "identifying said first method invocation". The Claim is a mere code of a source file such as a Java program in a JKD library (page 1), a program that is scanning in page 14, etc.

As per Claims 52 and 53:

Claims 52 and 53 recite a computer program product and a data processing system, respectively, which have claimed functionality corresponding to the limitation recited in Claim 1, i.e. the Claims recite mere a "resource file" and non-functional descriptive materials therein. Claims 22 and 43 are rejected in the same rationale set forth in Claim 1 above.

Allowable Subject Matter

7.   Followings are allowable subject matter in regards to Claims 2-21, 23-42, and 44-50

As per Claims 2-21 and 22-42:

Claims 2-21 and Claim 22-42 were previously objected to because of the allowability of Claim 2 and Claim 22, now **are rejected, identified as non-statutory**. The allowable subject matter of these Claims (Claims 2 and 22) remains the same as it given in the prior action.

As per Claims 44-50: Claims 44-50 remains are objected to. The allowable subject matter of these Claims (Claim 44) remains the same as it given in the prior action.

Conclusion

8.   Any inquiry concerning this communication or earlier communications from the examiner should

be directed to Ted T. Vo whose telephone number is (571) 272-3706. The examiner can normally be

reached on 8:00AM to 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan

Q. Dam can be reached on (571) 272-3694. The fax phone number for the organization where this

application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application

Information Retrieval (PAIR) system. Status information for published applications may be obtained from

either Private PAIR or Public PAIR. Status information for unpublished applications is available through

Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC)

at 866-217-9197 (toll-free).
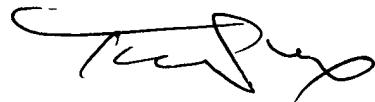
Ted T. Vo
Patent Examiner
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